There should be judgment for the University in the sum of $5,000.

Appeal allowed.

Solicitors: *Shook Lin & Bok; Michael Chen & Lee.*

DR. JENNI IBRAHIM v. S. PAKIANATHAN

[O.C.J. (Ajaib Singh J.) December 26, 1985]

[Ipoh – Civil Suit No. 57 of 1982]

Libel and Slander – Libel – Publication – Malice – Embarrassment and humiliation suffered by plaintiff psychologist – Whether there was qualified privilege – Damages.

The plaintiff was a psychologist and had been doing voluntary consultant work as such in Pusat Pertolongan in Kampong Bercham. On September 7, 1981 the defendant wrote to the Chief Police Officer stating that for the first 5 months in 1981 a sum of $18,000 had not been entered in the statement of account of the Pusat Pertolongan although the cheques was signed by two directors one of whom was the plaintiff. Again on October 1, 1981 the defendant wrote to one Azman bin Abdul Aziz who was the secretary of the Pusat inferring that plaintiff had misappropriated $70,033.93 belonging to the Pusat. The following day he wrote to the plaintiff making the same allegation and warned that if the said sum was not reimbursed he would lodge a police report against her for breach of trust and described the plaintiff's conduct as a criminal act. On October 13, 1981 the defendant addressed to the secretary of the Pusat and proposed several resolutions one of which was that the plaintiff together with a former director had committed breach of trust of the Pusat funds amounting to $70,033.93. Copies of the said letter were sent to all the directors of the Pusat, to the Director of Welfare Services Perak and to the Registrar of Societies of Malaysia. The plaintiff sued the defendant for libel.

Held: (1) by sending copies of his letters containing serious allegations of criminal breach of trust, to various people there was sufficient publication of the libel by the defendant;

(2) there was no merit in the defence of justification as there was hardly any evidence in support. On the contrary there was ample evidence to hold that not only the allegations made by the defendant were untrue but the defendant had acted maliciously against the plaintiff;

(3) the defendant's statements exceeded the limits of fair comment and as these statements were wholly untrue and made in bad faith with the sole motive of maligning the plaintiff, the defence plea of qualified privilege failed;

(4) for the embarrassment, distress and humiliation which the plaintiff had suffered as the result of libel against her by the defendant the plaintiff is awarded a sum of $30,000 as damages.

CIVIL SUIT.

G. Moganasundram for the plaintiff.
Chin Fook Yen for the defendant.

Cur. Adv. Vult.

Ajaib Singh J.: After giving due consideration to all the evidence adduced in this case and the submissions made on behalf of the parties I have come to the conclusion that the plaintiff must succeed in her suit for libel against the defendant.

On September 7, 1981 the defendant wrote to the Chief Police Officer stating that for the first five months in 1981 a sum of $18,000 had not been entered in the statement of account although the cheques were signed by two directors Mr. Chew Peng Loon and Dr. Jenni Ibrahim. This must necessarily infer that these two directors had misappropriated the money belonging to the Pusat Pertolongan.

On October 1, 1981 the defendant wrote to Azman bin Abdul Aziz the secretary of the Pusat which clearly inferred that Dr. Jenni Ibrahim had misappropriated $70,033.93 belonging to the Pusat. The next day he wrote to Dr. Jenni Ibrahim making the same allegation and stating that she should reimburse the sum of $70,033.93 to the Pusat. This letter was sent to the plaintiff at her address in Tambun Heights and a copy sent to the plaintiff c/o Pusat Pertolongan in Kampong Bercham. On receipt of this letter at the Pusat the secretary opened it after getting the plaintiff's consent over the phone. Madam Ramjaan Begum who was then attached to the administrative office of the Pusat also read this letter as it was duly filed in the office records.

In this letter the defendant warned the plaintiff that if the sum of $70,033.93 was not reimbursed he would lodge a police report against her for breach of trust and described the plaintiff's conduct as a criminal act.

On October 13, 1981 the defendant by letter addressed to the secretary of the Pusat proposed several resolutions one of which was that the plaintiff together with a former director Yacob bin Abdul Rahman Scholer had committed breach of trust of the Pusat funds amounting to $70,033.93. The defendant sent copies of this letter to all the directors of the Pusat as well as to the Director of Welfare Services Perak and to the Registrar of Societies, Malaysia.

All the statements made by the defendant in his various letters he had sent out were very serious in nature suggesting that Dr. Jenni Ibrahim had committed criminal breach of trust of funds belonging to the Pusat. By sending copies of his letters to various people there was sufficient publication of the libel by the defendant.

The defence pleaded justification – that the words complained of were true in substance and in fact. Secondly that his statements on Dr. Jenni Ibrahim were stated on occasions of qualified privilege. Thirdly that the words amounted to a fair comment on the accounts of the Pusat and lastly that in writing those letters he had acted without malice.

There is no merit in the defence as there is hardly any evidence in support. On the contrary there is ample evidence to hold that not only the allegations made by the defendant were untrue but that the defendant had acted maliciously against the plaintiff in an attempt to defame her character.

The defendant's statements exceeded the limits of fair comment as these statements were wholly untrue and made in bad faith with the sole motive of maligning the plaintiff. The defence plea of qualified privilege cannot also succeed as there was no common and corresponding duty or interest between the defendant and the several persons who received and read the libelous statements.

The defendant's relationship with the other board members had not been a cordial one and when he was removed as an executive managing director and replaced by Dr. Jenni Ibrahim on August 27, 1981 the defendant lost no time in expressing his vindictiveness and malice against Dr. Jenni Ibrahim with his letter of September 7, 1981 to the Chief Police Officer.

The defendant took a very uncompromising stand throughout. He made no attempt to show any regret at having made such serious and false accusations against Dr. Jenni Ibrahim. Instead he relentlessly and remorsely harrassed Dr. Jenni Ibrahim by continuing his attacks on her after his first letter of September 7, 1981 to the Chief Police Officer. Even after Dr. Jenni Ibrahim had commenced her libel suit in February 1982 the defendant, in a last fling, lodged a police report on May 15, 1982 alleging that large sums of money were missing from the Pusat and suggesting that several persons whom he named in the report including Dr. Jenni Ibrahim had committed breach of trust.

The plaintiff is a psychologist by profession and has been doing voluntary consultant work as such in Pusat Pertolongan. She said in her evidence that she was extremely distressed by the allegations which the defendant had made against her and she could hardly sleep or concentrate on her work thereafter and she felt her inner feelings damaged as an honest person.

Her husband too was distressed and had in fact asked her to resign from the Pusat. Some friends had also called upon and spoken to her enquiring about the financial matters of the Pusat which in a way suggested that she was involved in something shady therein. She even contracted asthma which was diagnosed by a specialist as having been caused by the events arising in the Pusat.

Dr. Jenni Ibrahim eventually resigned as the executive managing director towards the end of October 1982 but remains as a member of the Pusat doing voluntary consultancy work as she had done before.

Dr. Jenni Ibrahim has succeeded in her suit and she is therefore entitled to pecuniary damages against the defendant for libel. In assessing damages I am taking into consideration the serious nature of the libel and the fact that it was committed by the defendant falsely and maliciously. The plaintiff is a psychologist by profession and is well known for the social and community service which she is doing particularly in the field of rehabilitation of drug addicts.

For the embarrassment, distress and humiliation which she has suffered as a result of the libel against her by the defendant I award her a sum of $30,000 as damages. I also order the defendant to pay the costs of the suit to the plaintiff.

Order accordingly.

Solicitors: *Mogan & Co.; Chin Fook Yen.*